

## Exhibit “D”

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES FRATZ,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A. and  
GOLDMAN & WARSHAW, P.C.,

Defendants.

Civil Action No. 11-cv-2577

Mitchell S. Goldberg  
United States District Judge

**DECLARATION OF RICHARD A. NAPOLITANO**

I, Richard A. Napolitano, declare, under penalty of perjury, as follows:

1. My name is Richard A. Napolitano. I am a resident of the Commonwealth of Virginia. I am over 18 years of age and am competent to make this declaration based upon my personal knowledge and my review of Capital One Bank (USA), N.A.'s ("COBUSANA") records and those of its related entities.
2. I make this declaration in support of the motion for summary judgment submitted by Defendant Goldman & Warshaw, P.C. in the above-captioned matter.
3. I am a Senior Extended Operations Associate for Capital One Services, LLC ("COSLLC"), an affiliate and service provider to COBUSANA. I have been employed by Capital One Services since 1994 in various capacities. Other positions that I have held with Capital One Services include: Recoveries Litigation Manager and Senior Legal Recoveries Specialist.
4. My present job responsibilities include, among other things, assisting in the management of defaulted accounts and responding to inquiries directly from retained law firms concerning counter-claims, maintenance and litigation managers.

5. Until March 1, 2008, COBUSANA was known as Capital One Bank ("COB"). On March 1, 2008, COB converted to COBUSANA, a national banking association organized under federal law and COB ceased to exist as a legal entity. As of March 1, 2008, the consumer credit card accounts that were formerly owned by COB, which include the Plaintiff's account at issue in the above-captioned matter, are now owned by COBUSANA.

6. Credit cards issued under the Capital One brand name are issued and owned by COBUSANA. COSLLC, as an affiliate and service provider, is the entity that provides certain servicing operations to COBUSANA. COSLLC provides the administration and operational support for COBUSANA to carry out its banking activities under the National Banking Act. Among other things, COSLLC provides the following services on behalf of and for the sole benefit of COBUSANA with respect to its nationwide credit card and other banking activities: bank account management, including issuance of account statements, notices and customer agreements; customer service activities and communications; payment remittance and payment processing; collections; and other acts of servicing accounts and/or products issued by COBUSANA.

7. I am familiar with the credit card operations of COBUSANA.

8. I am familiar with COBUSANA's system of recordkeeping and its related policies and procedures. Those policies include, in part, COBUSANA's receipt, review, and storage of its credit card agreements with consumers and the forwarding of those agreements to COBUSANA's assigned counsel as they relate to the litigation and collection of unpaid accounts in the normal course of its business.

9. Goldman and Warshaw, P.C. ("Goldman") is a designated outside counsel for COBUSANA and has been so since approximately 2001. Goldman is forwarded certain

COBUSANA delinquent accounts for collection and litigation in the normal course of business, including accounts with the legal entity name of COBUSANA.

10. As counsel for Capital One, Goldman is provided certain documents in support of litigation efforts including documents which are used as exhibits for matters in which lawsuits are filed on behalf of COBUSANA.

11. On or about November 4, 2002, COB issued a credit card account to Charles J. Fratz, bearing account number xxxx-xxxx-xxxx-3273(the "Account").

12. Upon origination of the Account, Plaintiff was sent both a credit card bearing account number xxxx-xxxx-xxxx-3273 and a copy of the Customer Agreement which governed the terms and conditions of the Account (the "Customer Agreement").

13. Pursuant to its terms, the above-mentioned Customer Agreement for the Account was modified to version 005 by COBUSANA in March 2005 (the "2005 Customer Agreement"). A copy of the 2005 Customer Agreement is attached hereto as Exhibit A.

14. A copy of the 2005 Customer Agreement was mailed to Charles J. Fratz at the address of record for the Account as of March 2005.

15. Charles J. Fratz defaulted on the Account and the Account was charged off on February 22, 2008.

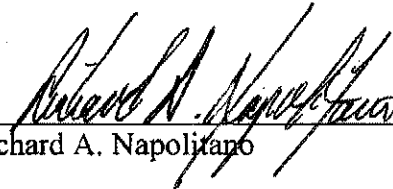
16. The Account was forwarded to Goldman for litigation and the 2005 Customer Agreement was provided to Goldman by COBUSANA.

17. All individual credit card accounts with COBUSANA that were opened prior to July 1, 2008 and charged off after April 1, 2005 are subject to the terms and conditions of the 2005 Customer Agreement.

18. The 2005 Customer Agreement was the most current and correct customer agreement for Charles J. Fratz's credit card account with COBUSANA and the 2005 Customer Agreement was the agreement supplied to Goldman by COBUSANA.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of October, 2011

  
Richard A. Napolitano